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ARTICLE VI: NONCONFORMITIES

78-600 GENERALLY**(A) Intent**

It is the town council's intent to protect vested rights from impairment, while at the same time to provide for the gradual elimination of nonconforming uses, nonconforming structures, and nonconforming lots, to achieve eventual conformance with the policies of the town council as expressed in this chapter. Nonconformities are not supposed to be perpetuated, renewed or replaced. Nonconformities should not be extended, enlarged or rendered more permanent, and shall be brought into compliance with this chapter upon the elimination of the nonconformity. The town council intends to allow the adaptive reuse and convenient and efficient utilization of structures in the heritage preservation districts and other older areas that may have been developed under different standards, by allowing some flexibility in the treatment of nonconformities where the specific nonconformity is not increased.

(B) Interpretation

- (1)** Any use, lot, parcel or structure that was unlawful on the date of the enactment of this chapter, October 26, 1971, or amendment thereto, shall remain unlawful and shall not enjoy the status of a nonconforming use, nonconforming structure or nonconforming lot.
- (2)** Nonconforming status shall adhere to the land and shall not be personal to the owner, tenant or possessor of land.

Editor's note: The ordinance from which this chapter was derived shall be effective on and after the date of its adoption and shall apply (where it does so apply) to rights in existence on and after October 26, 1971. The town council intends that the ordinance from which this chapter was derived apply retroactively to clarify, preserve and support zoning rights that were in existence on and after (or that have come into existence since) October 26, 1971.

If any part of Ordinance No. 97-O-32, adopted December 9, 1997, should be declared invalid, unconstitutional or unenforceable, this declaration shall not affect the remaining parts of Ordinance No. 97-O-32. The remaining parts of Ordinance No.97-O-32 in that case shall continue in force.

78-601 NONCONFORMING USES**(A) Accessory Uses**

- (1)** A use that is accessory or incidental to a permitted principal use cannot be made the basis for a nonconforming principal use.
- (2)** No use, including signage, accessory to a principal nonconforming use, shall continue after such principal use terminates, except as may be approved under Section 78-601(E), *Change of a nonconforming use to a different nonconforming use that decreases the degree of nonconformity*

(B) Continuation; nonconforming uses for parts of structure.

- (1) A nonconforming use may continue as it existed when it became nonconforming.
- (2) A nonconforming use as to a part of a structure shall not affect the status of uses in the remaining part of the structure.

(C) Discontinuance

- (1) If any nonconforming use is discontinued for a continuous period of two years or more, or is changed to or replaced by a conforming use, it shall lose its nonconforming status, except as provided in Section 78-601(E), *Change of a nonconforming use to a different nonconforming use that decreases the degree of nonconformity*. Any subsequent use shall conform to the provisions of this chapter.
- (2) Operation of only an accessory or incidental use to the principal nonconforming use during the two-year period shall not continue the principal nonconforming use.

(D) Permitted changes

- (1) A nonconforming use, or the structure in which it exists, may be changed, altered, structurally altered, repaired, restored, replaced, relocated or expanded without loss of nonconforming use status only in accordance with this article, and subject to the appropriate approvals, including building permit approval, and zoning inspection approval. Changes not permitted under the standards of this article shall cause loss of nonconforming use status and shall meet the applicable provisions of this chapter.
- (2) A nonconforming use may be changed to a conforming use.
- (3) A nonconforming use may change to a different nonconforming use that decreases the degree of nonconformity, as set forth in Section 78-601(E).
- (4) A conforming or nonconforming structure housing a nonconforming use may be repaired, provided that such repair constitutes only routine maintenance necessary to keep the structure in the same general condition it was in when the use originally became nonconforming. Inherently unsafe nonconforming uses, or the structures housing those uses, may be restored or replaced, where otherwise allowed by law.
- (5) A structure housing a nonconforming use damaged by casualty (as distinguished from ordinary wear and tear) may be restored in accordance with the provisions of Section 78-601(F), *Restoration of a nonconforming use damaged by casualty*.
- (6) Minor alterations, cosmetic modifications, interior renovations, and similar nonstructural changes may be permitted subject to the following standards:
- (a) Such changes shall not increase the land area occupied by any aspect of the nonconforming use, and shall not increase the gross floor area of any structure that is the site of a nonconforming use; and
- (b) Such construction shall meet all current requirements of this chapter.
- (7) A nonconforming use occupying an existing structure may expand only in accordance with the following provisions:
- (a) An existing conforming or nonconforming structure devoted to a nonconforming use shall not be enlarged, extended, constructed, reconstructed, moved or structurally altered except in accordance with sections 78-601(D)--78-601(F); and

- (b) Any nonconforming use may be extended throughout any parts of a structure which were manifestly arranged or designed for such use at the effective date of this chapter, October 26, 1971, or amendment thereto. Such use shall not be extended to occupy any land outside the structure, except accessory uses that do not compound the nonconforming uses shall be allowed under Section 78-202~~(I)(4)~~ and Section 78-202~~(J)(4)~~ of this chapter.
- (8) No nonconforming use shall be expanded or moved to any other lot or within the lot on which it exists unless such lot is zoned to permit the use.
- (9) Within the Floodplain Overlay District
- (a) Use of land and use of structures within the Floodplain Overlay District are subject to the limitations of this subsection.
- (b) Existing structures in a Floodway Area, zone A1-A30, or zone AE, shall not be expanded or enlarged unless it has been demonstrated through hydrologic and hydraulic analyses performed in accordance with standard engineering practice that the proposed expansion would not result in any increase in the one hundred (100)-year flood elevation.
- (c) Within the Floodplain Overlay District, existing structures and/or uses shall not be expanded or enlarged unless the effect of the proposed expansion or enlargement on flood heights is fully offset as part of the improvements, such that there is no net flood height increase resulting from the expansion or enlargement.
- (10) In any change of a nonconforming use which causes a loss of nonconforming use status, any required parking shall be provided under article V of this chapter only for any marginal increase of parking required for the new use over the parking required for the existing use. Computation of parking required under the existing use and under the new use shall be based on the land or building space subject to change. Any increase in required parking shall be provided in addition to any existing conforming parking.
- (E) **Change of a nonconforming use to a different nonconforming use that decreases the degree of nonconformity**
- (1) A nonconforming use may change to a different nonconforming use that decreases the degree of nonconformity or a conforming use, upon issuance by the zoning administrator or his designee of a written approval for such a change. The approval shall include a determination that the proposed use is more restricted than the existing nonconforming use. If the zoning administrator or his designee determines the proposed use is not more restricted than the existing nonconforming use, the application shall be denied.
- (2) In determining whether a proposed use decreases the degree of nonconformity, the following factors among others shall be considered:
- (a) Whether the proposed use will change the size, type and scope of the existing use;
- (b) Whether the proposed use will increase the intensity of the nonconforming use, including hours of operations, traffic, noise, and similar visual impacts;
- (c) Whether the proposed use will have a more or less detrimental effect on conforming uses in the surrounding area; and
- (d) Whether the proposed use would require more parking. A more restricted nonconforming use shall never be a use which requires more parking than the existing nonconforming use.
- (3) In the issuance of an approval to change to a conforming use or to a different nonconforming use that decreases the degree of nonconformity, the

procedures, set forth in Section 78-202~~(I)(J)~~ or Section 78-202~~(J)(K)~~,
whichever is appropriate, of this chapter shall be followed.

(F) Restoration of a nonconforming use damaged by casualty

- (1)** A structure housing a nonconforming use that is damaged by any casualty to an extent of 50 percent or less of its assessed value(exclusive of foundation) at the time of the casualty according to the records maintained by the county department of tax administration, may be restored to its condition prior to the casualty. Such restoration shall be begun within 12 months of the date of the casualty and completed within 24 months of the date of the casualty.
- (2)** The restoration shall not include any expansion unless approved under the provisions of section 78-601(D), *Permitted changes* Such restoration may include changes that make the use less nonconforming than it was prior to the casualty.
- (3)** A structure housing a nonconforming use that is damaged by any casualty to an extent more than 50 percent of its assessed value(exclusive of foundations) at the time of the casualty according to the records maintained by the county department of tax administration, shall not be restored except as follows:
 - (a)** Restoration shall be permitted to a conforming use.
 - (b)** If the use is as a single family detached or single family attached dwelling, restoration shall be permitted, provided such restoration is begun within 12 months of the date of the casualty and completed within 24 months of the date of the casualty, and the dwelling occupies the same space that it occupied prior to such casualty. In no instance shall such structure be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.
- (4)** In the Floodplain Overlay District, the modification, alteration, repair, reconstruction or improvement that amounts to less than 50 percent of its market value is elevated or flood proofed or both to the greatest extent possible.
- (5)** Restoration of a structure housing a nonconforming use shall require approval as set forth in Section 78-202~~(I)(J)~~ or Section 78-202~~(J)(K)~~, whichever is appropriate, of this chapter.

78-602 NONCONFORMING STRUCTURES

(A) Relationship with nonconforming uses

Where a nonconforming structure is the site of a nonconforming use, the regulations for nonconforming structures and nonconforming uses shall both be applied. In case of conflict, the rules for nonconforming uses shall prevail.

(B) Continuation

A nonconforming structure may continue as it existed when it became nonconforming, as long as it is maintained in its then structural condition. The nonconforming structure shall be brought into conformity with this chapter, including the parking requirements set out in Section 78-500 of this chapter, whenever the nonconforming structure is enlarged, extended, reconstructed or structurally altered, in such a way that increases or intensifies the elements of nonconformity. Changes to nonconforming structures not permitted under the standards of this article shall cause a loss of nonconforming structure status and shall meet the applicable provisions of this chapter.

1 **(C) Other permitted changes**

- 2 **(1)** This section supplements the provisions of section 78-601(B), *Continuation;*
3 *nonconforming uses for parts of structure.* and shall be read in concert with it.
4 In case of conflict, this section shall prevail.
- 5 **(2)** A nonconforming structure may be changed, altered, structurally altered,
6 repaired, restored, replaced, relocated or expanded only in accordance with
7 this section and only with the appropriate approvals, including building permit
8 approval and zoning inspection permit approval.
- 9 **(3)** A nonconforming structure may be changed to a conforming structure by
10 conforming to all requirements of this chapter.
- 11 **(4)** A nonconforming structure may be repaired, provided that such repair
12 constitutes only routine maintenance necessary to keep the structure in the
13 same general condition it was in when it became nonconforming. Inherently
14 unsafe nonconforming structures may be restored or replaced, where
15 otherwise allowed by law.
- 16 **(5)** A nonconforming structure damaged by casualty (as distinguished from
17 ordinary wear and tear) may be restored in accordance with section 78-
18 602(D) *Restoration of a nonconforming structure after damage by casualty*
19 *(excluding natural disaster or other "Acts of God")* or section 78-602(E)
20 *Restoration of a nonconforming structure after damage by a natural disaster*
21 *or other act of God*, as applicable. .
- 22 **(6)** Minor alterations, cosmetic modifications, interior renovations and similar
23 nonstructural changes may be permitted subject to the following standards:
- 24 **(a)** Such changes shall not increase the land area occupied by any
25 aspect of the nonconforming structure and shall not increase the
26 gross floor area of any nonconforming structure; and
- 27 **(b)** Such construction shall meet all current requirements of this chapter.
- 28 **(7)** No nonconforming structure shall be moved to any other lot or within the lot
29 on which it exists unless the nonconforming structure is brought into
30 conformity with this chapter.
- 31 **(8)** A nonconforming structure may be enlarged, extended, reconstructed,
32 altered or structurally altered in ways that do not increase or intensify the
33 elements of nonconformity, under the procedures of in Section 78-202~~(J)(4)~~
34 or Section 78-202~~(J)(K)~~, of this chapter or, if applicable, Section 78-202(F) of
35 this chapter.
- 36 **(9)** If the amount of parking provided for a structure is inadequate to meet the
37 requirements of Section 78-500 of this chapter, based upon the existing use,
38 then the structure is nonconforming with respect to parking. If the use within
39 such structure is changed, then additional parking which meets the
40 requirements of article of this chapter shall be provided only for any marginal
41 increase of parking required for the new use over the parking required for the
42 existing use. Computation of parking required under the existing use and
43 under the new use shall be based on the land or building space subject to
44 change. Any increase in required parking shall be provided in addition to any
45 existing conforming parking.

46
47 **(D) Restoration of a nonconforming structure after damage by casualty (excluding**
48 **natural disaster or other "Acts of God")**

- 49 **(1)** A nonconforming structure that is damaged by any casualty (excluding
50 natural disaster or other Act of God) to an extent of 50 percent or less of its
51 assessed value (exclusive of foundations) at the time of the casualty
52 according to the records maintained by the county department of tax
53 administration may be restored to its condition prior to the casualty, provided
54 that such restoration is begun within 12 months of the date of the casualty

and completed within 24 months of the date of the casualty. For developments containing multiple buildings that are not assessed individually by the county department of tax administration, the total assessed value of all buildings on the property shall be used when calculating whether or not any casualty damage is equivalent to 50 percent ~~or~~ less.

(2) The restoration shall not include any expansion unless approved under the provisions of sections 78-602(B) and 78-602(C). Such restoration may include changes that make the structure less nonconforming than it was prior to the casualty.

(3) A nonconforming structure that is damaged by any casualty to an extent more than 50 percent of its assessed value (exclusive of foundations) at the time of the casualty according to the records maintained by the county department of tax administration shall not be restored except as follows:

(a) Restoration shall be permitted to a conforming structure.

(b) If the nonconforming structure is within the heritage preservation district, or is designed and used as a single family detached or single family attached dwelling and such single family detached or single family attached use is allowed in the zoning district in which the nonconforming structure exists, restoration of such structures shall be permitted. The restoration shall begin within 12 months of the date of the casualty and shall be completed within 24 months of the casualty. The structure shall occupy the same space that it occupied prior to such casualty. In no instance shall any residential structure covered by this subsection (D) ~~(2)~~ be used to accommodate a greater number of dwelling units than such structure accommodated prior to any such work.

(4) In the Floodplain Overlay District, the modification, alteration, repair, reconstruction or improvement that amounts to less than 50 percent of its market value shall be elevated or flood proofed or both to the greatest extent possible.

If it the structure in the Floodplain Overlay District is designed and used as a single family detached dwelling that is a permitted use in the zoning district pursuant to Table 78-400: *Table of Principal and Permitted Allowed Uses*, it may be restored in its location prior to casualty so long as:

1. The restoration is begun within 12 months and completed within 24 months of the casualty;
2. The modification, alteration, repair, reconstruction or improvement is elevated or flood proofed or both to the greatest extent possible;
3. The structure occupies the same space it occupied prior to the casualty; and
4. No dwelling units are added.

(5) Restoration of a nonconforming structure shall necessitate approval as set forth in Section 78-202 ~~(J)(4)~~ or Section 78-202 ~~(J)(4)~~, of this chapter.

(6) The reconstruction of preexisting buildings or structures destroyed or damaged by casualty is allowed, provided the reconstruction is in the same location and creates no more impervious area than the preexisting building or structure.

(E) Restoration of a nonconforming structure after damage by a natural disaster or other act of God

- (1)** If a residential or commercial building or permanent structure is damaged or destroyed by a natural disaster or other act of God, such building must be repaired, rebuilt or replaced provided such construction eliminates or reduces the nonconforming features to the extent possible, without the need to obtain a variance as provided in §15.2-2310, Virginia Code. If such building cannot be repaired, rebuilt or replaced except to restore it to its original nonconforming condition, the owner shall have the right to do so.
- (2)** The owner shall apply for a building permit and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the Uniform Statewide Building Code (§36-98 et seq., Virginia Code), and any work done to repair, rebuild or replace such building shall be in compliance with the provisions of the flood plain regulations adopted as a condition of participation in the National Flood Insurance Program. These provisions are found in Section 78-304 of this chapter.
- (3)** Unless such building is repaired or rebuilt within two years of the date of the natural disaster or replaced within two years of the date of the natural disaster or other act of God, such building shall only be repaired, rebuilt or replaced in accordance with the provisions of Section 78-602(D)(2) of this chapter. However, if the nonconforming building is in an area under a federal disaster declaration and the building has been damaged or destroyed as a direct result of conditions that gave rise to the declaration, then the owner of the building shall have an additional two years from the date of the natural disaster for the building to be repaired, rebuilt or replaced as otherwise provided in this section.

78-603 NONCONFORMING LOTS

(A) Lots predating the zoning chapter

- (1)** Conforming structures on a nonconforming lot are not nonconforming structures. Nonconforming structures on a nonconforming lot are not, by virtue of being located on a nonconforming lot, nonconforming structures. Such structures maybe continued, enlarged, extended, reconstructed or structurally altered in such a way that does not increase the nonconformity of the lot or any nonconformity of the structure and in such a way that is consistent with the requirements of this chapter.
- (2)** If, in a residential zoning district an improved lot (excluding outlots) was part of a subdivision or division of land evidenced by plat or deed, or both, recorded prior to October 26, 1971, the effective date of this chapter, then such lot, either as a single lot, or in combination with other lots accomplished by lot boundary line adjustment under section 70-205 70-108 of this Code, may be used, developed, redeveloped on the same footprint after casualty, for any currently or prospectively permitted use in the applicable zoning district. This use, development or redevelopment after casualty may take place even though the lot does not meet applicable minimum lot area or lot width requirements, provided that all other requirements of this chapter shall be satisfied.
- (3)** If, in a residential zoning district an unimproved lot (excluding outlots) was part of a subdivision or division of land evidenced by plat or deed, or both, recorded prior to October 26, 1971, the effective date of this chapter, then such lot, either as a single lot, or in combination with other lots accomplished by lot boundary line adjustment under section 70-205 70-108 of this Code, may be developed for any currently permitted use in the applicable zoning

district upon the town council's issuance of a conditional use permit for such development. This development may take place even though the lot does not meet applicable minimum lot area or lot width requirements, provided that all other requirements of this chapter shall be satisfied.

- (4) Subsections (2) and (3) of this section shall not apply to any lot which after the effective date of this section, December 9, 1997, is rezoned or subdivided at the request of the owner, except this last clause shall not apply to reduction in lot area or lot width resulting from a governmental acquisition of a portion of the lot for a public purpose.
- (5) Use, redevelopment or redevelopment after casualty of a nonconforming lot or the structures thereon in a manner not permitted by this section is prohibited.

(B) Change of nonconforming lot

Nonconforming lots in residential zoning districts may change as follows:

- (1) A nonconforming lot may be increased in lot size, lot width, or both, to make the lot less nonconforming. This action shall be accomplished by a boundary line adjustment under section 70-108 of this Code.
- (2) The boundaries of a lot that is nonconforming as to lot size or lot width, or both, may be adjusted by a ~~lot boundary~~ line adjustment under section ~~70-205 70-108~~ of this Code, with the boundaries of any contiguous conforming or nonconforming lot, provided that such adjustment does not make the lot or lots more nonconforming, that no new lot is created, and the lot width along the resulting front setback line or lines is not decreased to less than the minimum required within the respective zoning district.
- (3) Two or more conforming or nonconforming lots may be assembled to create a conforming lot by a boundary line adjustment under section 70-108 of this Code.

78-604 CORRECTION OF LANDSCAPING, PARKING, AND BUFFERING UPON EXPANSION OF A STRUCTURE OR USE

If the amount of parking, landscaping, or buffering or screening provided for a structure or use in a business zoning district is inadequate to meet the requirements of Article V: *Development Standards*, based upon the existing use, the structure or use is nonconforming with respect to parking, landscaping, or buffering or screening. The expansion of such structures and uses shall be subject to the following standards for parking, landscaping, buffering, screening and lighting:

(A) Expansions Resulting in Less than a 75 Percent Increase in Gross Square Footage

Expansions that result in less than a 75 percent increase in gross square footage of the existing structure(s) require that parking, landscaping, screening, buffering and lighting be improved a rate equivalent to

$$2 \times (\text{percentage increase in gross square footage of the existing structures}) = \text{percentage of correction of nonconformity for parking, landscaping, screening, buffering and lighting.}$$

(For example, if the addition is 25 percent of the size of the existing building and the site contains only 50 percent of the required landscaping, 50 percent of the required landscaping for the entire area shall be provided, bringing the landscaping on the site

1 to 100 percent of the total required in Article V: *Development Standards*.) Existing
2 landscaping on the site shall be retained or replaced but shall not count toward the
3 required percentage of new landscaping (see Section 78-503, *Site Landscaping*.)

4 **(B) Expansions Resulting in 75 Percent or More Increase in Gross Square Footage**

5 Expansions resulting in an increase of gross square footage of the existing
6 structure(s) by greater than 75 percent require the site to comply fully with the
7 standards of Section 78-503, *Site Landscaping*.

8 **(C) Landscaping and Screening on Physically Constrained Lands**

9 Lands physically constrained from complying with these provisions shall comply with the maximum
10 extent practicable for landscaping and screening, as determined by the Zoning Administrator. No
11 allowance for physically constrained land shall be permitted for the required number of parking
12 spaces.